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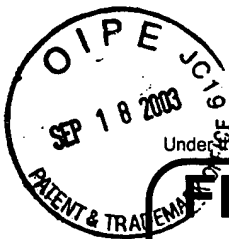
TRANSMITTAL FORM (To be used for all correspondence after initial filing)		Application Number	10/055,658
		Filing Date	January 23, 2002
		First Named Inventor	Klaus-Dieter Nehren
		Group Art Unit	3754
		Examiner Name	Joseph A. Kaufman
Total Number of Pages in This Submission	20	Attorney Docket Number	Heraeus 385-WCG

ENCLOSURES (check all that apply)		
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Remarks: Brief on Appeal in triplicate		RECEIVED SEP 25 2003 TECHNOLOGY CENTER R3700

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	NORRIS McLAUGHLIN & MARCUS, P.A. William C. Gerstenzang Reg. No. 27,552
Signature	
Date	September 18, 2003

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Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) \$320.00

Complete if Known

Application Number	10/055,658
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First Named Inventor	Klaus-Dieter NEHREN et al
Examiner Name	Joseph A. Kaufman
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SEP 25 2003

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The Director is authorized to: (check all that apply)

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	

2. EXTRA CLAIM FEES FOR UTILITY AND

Extra Claims		Fee from below		Fee Paid
Total Claims	-20** = 0	X		= 0.00
Independent Claims	- 3** = 0	X		= 0.00
Multiple Dependent				

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	84	2201	42	Independent claims in excess of 3
1203	280	2203	140	Multiple dependent claim, if not paid
1204	84	2204	42	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) \$0.00

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FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non - English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	320.00
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR § 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Statement	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) \$320.00

SUBMITTED BY

Name (Print/Type)	William C. Gerstenzang	Registration No. (Attorney/Agent)	27,552	Telephone	212-808-0700
Signature		Date	September 18, 2003		

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Date: September 18, 2003

#17/Brief Appeal
9/24/03
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Attorney Docket No. Heraeus 385-WCG

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Klaus-Dieter Nehren, et al.
Serial No. : 10/055,658
Filed : January 23, 2002
For : APPARATUS FOR EMPTYING A HOSE BAG
Art Unit : 3754
Examiner : Joseph A. Kaufman

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TECHNOLOGY CENTER R3700

September 18, 2003

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APPELLANTS' BRIEF ON APPEAL PURSUANT TO 37 CFR §1.192

SIR:

This is an appeal from the final rejection by an Examiner of Art Unit 3754.

(1) REAL PARTY IN INTEREST

The instant application is owned by Heraeus Kulzer GmbH & Co., K.G.,

Gruner Weg 11, 63450 Hanau, Germany, record owner hereof.

09/23/2003 AWONDAF1 00000121 141263 10055658

01 FC:1402 320.00 DA

(2) RELATED APPEALS AND INTERFERENCES

The undersigned is not aware of any appeals, interferences, reexaminations, infringement actions, or the like, in any related applications.

(3) STATUS OF CLAIMS

The claims pending in this application are claims 1-6, and all of said claims are on appeal.

(4) STATUS OF AMENDMENTS

The last amendment made was that filed on February 4, 2003, and said amendment was entered. There are no unentered amendments.

(5) SUMMARY OF INVENTION

Each of the appealed claims relates to a novel device for emptying a hose bag. The novel device includes a helical cutting blade (Figs. 3, 4, 5, 6; claim 1).

The helical cutting blade has a helical cutting edge (see Figs. 4, 6).

Appellants' device, using its helical cutting blade, cuts the package material with a clean, S-formed cut. Because of this cut form, no pieces of the packaging (i.e. foil or plastic sheet) will be found in the material dispensed from the hose bag. Due to the movement of the helical cutting blade, there is initially a combined cutting and piercing action. This provides a clean cut, and the bag material (i.e., foil, plastic, etc.) is not allowed to break uncontrolled. No pieces will be separated from the packaging material.

(6) ISSUE

The sole issue is whether claims 1-6 are unpatentable under 35 USC 102(b) as anticipated by King et al (US Patent 5,429,273).

(7) GROUPING OF CLAIMS

The claims stand or fall together.

(8) ARGUMENT

The Examiner, in the final rejection, argues simply that King et al shows a helical cutting blade. In reaching this conclusion, the Examiner relies on Webster's New World Dictionary, in which he finds a definition of a cutting blade as "the cutting part of a tool, instrument, or weapon". The Examiner goes on to argue that the tip of the cutting device 42 clearly meets this definition of a blade as it cuts open the bag and is clearly in a helical configuration as seen in Fig. 4.

The sharp part of King's tool is the tip, however, and the tip is not helical (see the tip of King's Fig. 6). Thus, King does not have a helical cutting blade, he just has a sharp point or tip.

The language quoted by the Examiner by Webster's indicates that a blade is "the cutting part". The cutting part of King, however, is the tip, and this is not helical. King therefore neither teaches nor suggests a "helical cutting device".

King's corkscrew is not a blade. It is simply a corkscrew with a piercing tip as described by King in column 5, lines 20, 21. Even the tip cannot be considered to have a cutting blade because it pierces - it does not "cut". The rest of King's helical structure does not possess any sharp edges, which would be necessary to qualify as

a blade. This would be counterproductive for the function of the threaded part which is not for cutting but provides for sealing together with the pouch foil.

Appellants' device, by contrast, has helical knife edges which provide an S-formed cut in the bag (page 3, line 12). Neither such form nor such function is described by King.

The one step motion/action of Appellants' device is the direct result of the helical construction and this advantage is surprising and unexpected in view of the prior art.

Accordingly, the rejection of claims 1-6 under 35 USC 102(b) as anticipated by King et al (USP 5,429,273) should now be reversed.

(9) CONCLUSION

Wherefore it is submitted that the final rejection is in error and should be reversed.

CONDITIONAL PETITION FOR EXTENSION OF TIME


If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess to our Deposit Account No. 14-1263.

Respectfully submitted

NORRIS, McLAUGHLIN & MARCUS

By 

William C. Gerstenzang
Reg. No. 27,552

WCG/jh

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By 

Julie Harting
Date September 18, 2003

(10) APPENDIX

The claims on appeal read as follows:

Claim 1. Apparatus for emptying a hose bag comprising a cap-like mating part fixed on one end thereof, which has a pipe-shaped outlet opening (3) and a helical cutting device arranged therein for opening the hose bag.

Claim 2. Apparatus in accordance with claim 1, wherein the blade is rotatably displaceable into the outlet opening and in the hose bag direction through an insertable nozzle.

Claim 3. Apparatus in accordance with claim 1, wherein the blade is lockable in an end position, wherein a hose bag is cut open.

Claim 4. Apparatus according to claim 2, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 5. Apparatus according to claim 3, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 6. Apparatus in accordance with claim 2, wherein the blade is lockable in an end position, wherein a hose bag is cut open.